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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
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NO. 43200-5-II

IN THE WASHINGTON STATE COURT OF APPEALS,

DIVISION II

COUNTRY MANOR, LLC, a Washington limited liability company,

Appellant,

Vs.

LES CLIFTON and LINDA A. CLIFTON,

Respondents.

BRIEF OF RESPONDENT

Response to the Appeal from the Ruling of

Judge Robert Lewis

Clark County Superior Court Dept. 9

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8/21/12

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A. INTRODUCTION OF PARTIES

Country Manor is a manufactured home community located in Brush Prairie, Washington, and is owed by the Appellant (the "Landlord"). The Landlord leased its Lot 5 to Respondent Linda Clifton (the "Tenant) in February 2008 pursuant to the Manufactured/Mobile Home Landlord Tenant Act at Ch. 59.20 RCW (the "MHLTA"). In April 2008, Respondent Les Clifton moved in with Linda Clifton and they occupied Lot 5 together. In August 2011, the Tenants began the process to sell their home to another resident in the mobile home community, Eva Ball. In addition, the Tenants also began the process to purchase another mobile home within the same community from Bernadine Baum.

In September 2011, the Tenants sold their mobile home to Eva Ball and gave notice of their intent to sell which the Landlord approved even though it was not as timely as RCW 59.20.073

required. In addition, the Tenants purchased a mobile home on Lot 15 within the community from Bernadine Baum who was untimely in providing her Notice of Intent to Sell per RCW 59.20.073. The Landlord disapproved the transfer of the lease from Bernadine Baum to the Tenants because the Tenants did not re-apply to become Tenants in Lot 15.

The Tenants refused to submit a full and complete application for tenancy at Lot 15 reasoning that they were already approved for Lot 5, why should they have to re-apply and subject themselves to disapproval by re-applying for tenancy at Lot 15.

The Landlord served a 3-Day Notice to Quit the Premises in September 2011, served a Notice of Failure To Comply in October 2011, and then initiated this lawsuit in November 2011 for eviction when the Tenants did not re-apply for

tenancy in Lot 15.

The parties appeared before Judge Daniel Stahnke in Clark County Superior Court on November 23, 2011. Judge Stahnke, pursuant to RCW 59.18.380, received the Tenants oral answer and ordered them to file a written answer. In addition, Judge Stahnke determined that the issues presented needed additional time to examine the parties and witnesses orally to ascertain the merits of the complaint and the answer. Therefore, Judge Stahnke set the case for an evidentiary hearing before the assigned Judge Robert Lewis on December 1, 2011, which was later continued to December 12, 2011.

The parties appeared before Judge Lewis on December 12, 2011 and January 6, 2012 to present the testimony of the witnesses called by both parties, including the parties themselves. Judge Lewis ruled that the Tenants could cure their

defaults by submitting their application and paying the screening fees by January 18, 2012, and then the Landlord would have opportunity to approve or disapprove their application by January 25, 2012, which the Court would review for reasonableness pursuant to RCW 59.20.073(5) on January 27, 2012. The trial court also denied the request for attorney's fees based on a finding that each party had partially prevailed, and, each would bear their own costs and fees.

The Tenants complied with the Court's order, the Landlord disapproved the Tenants' application, and the Court sustained the Landlord's disapproval on February 10, 2012 and entered an Order Authorizing a Writ of Restitution on that date.

This appeal followed.

B. RESPONSE TO ASSIGNMENTS OF ERROR

(1) Response to Assignments of Error.

A. The trial court did not err in failing to issue a writ of restitution at the initial show cause hearing pursuant to RCW 59.18.380 on the grounds that there were disputed issues of material fact regarding whether or not Tenants had failed to comply with RCW 59.20.073 by not getting Landlord's approval to transfer tenancy from Lot 5 to Lot 15 because they were already residents of the community.

B. The trial court did not err in continuing the case to an evidentiary hearing to examine the parties and witnesses orally to ascertain the merits of the complaint and answer pursuant to RCW 59.18.380.

C. The trial court did not err in not finding Tenants in unlawful detainer at the

evidentiary hearing and finding that Tenants could cure their defaults by submitting their application for tenancy in Lot 15.

D. The trial court did not err in denying Landlord's attorney's fees because there was no legal contract between Landlord and Tenant for Lot 15 and neither side was a prevailing party.

(2) Response to Issues Pertaining to Assignments of Error.

A. The trial court does not err in setting the case for an evidentiary hearing when the Tenants are in possession of Landlord's premises on the grounds that the trial court found that there disputed issues of material fact on whether or not Tenants were required to comply with RCW 59.20.073 when they were already residents of the mobile home community.

B. The trial court did not exceed its discretionary authority by ordering Tenants to comply with RCW 59.20.073 once it is determined that they are required to comply with such authority.

C. The trial court did not err in denying Landlord an award of attorney fees at trial and on appeal when both parties have substantially prevailed at trial and where Landlord does not improve his position on appeal.

C. STATEMENT OF THE CASE

On February 1, 2008, Linda Clifton entered into a rental agreement with Landlord. Trial Exhibit ("Ex.") 7; 2 RP 81:24-82:1*). Les Clifton moved into the home on Lot 5 initially without the Landlord's permission, but then after being screened, with Landlord's permission. (2RP 104:3-19).

On or about August 19, 2011, Tenants agreed with Eva Ball to sell their residence on Lot 5 to her. (RP 85:16-20). They had agreed to complete the transaction a month later. (2RP 85:24-25). The Cliftons moved out of Lot 5 on October 23, 2011. (2RP 86: 12-13). Linda Clifton signed the Notice of Intent to Sell (Lot 5) on September 16, 2011 (2RP 87:1,2) but it was not delivered to the Landlord until September 28, 2011 (2RP 87:17-19). Landlord subsequently delivered Notice of Denial of Transfer of Tenancy on September 30, 2011, (Ex.8; 2RP 31) and then rescinded the Notice of Denial and approved the transfer of the lease to Eva Ball on or about the same date after updating her lease application. (3RP 158:7,8).

Linda Clifton testified about her conversation with the Landlord about transferring the lease on Lot 15 as follows:

> I had gone into the office to transfer the rental agreement from Lot 5 to Lot 15, and I was told at that time that I could not do

> that, that I had to fill out new paperwork. And I could not understand why because I had already been approved for 5. I was approved for the community. I felt like I was still approved for the community. I just wanted to move from one space to another, and I could not see why I had to make out new paperwork for that.

(2RP 88:15-22).

Tenants refused to fill out the new paperwork because they considered themselves approved for residency in the community, not just to a certain lot. In addition, Tenants believed that Landlords were favoring Eva Ball over her:

> I felt like they were giving her special treatment by asking her to come down, by calling her, from what I understand, that they called her to come down and fill out paperwork before we even got everything settled. (2RP 93:3-6)
>
> ...
>
> I understand that she didn't have to fill out a new application; that she was just able to sign an agreement. She didn't have to do a new application. (2RP 93:16-18)

Eva Ball confirmed this testimony at trial. (3RP 158:3-5).

At about the same time, Bernadine Baum sold her mobile home on Lot 15 to the Tenants. (3RP 147:6,7). Baum gave her Notice of Intent to Sell by filling out the form and giving it to Les Clifton to deliver to the Landlord near the end of September 2011. (3RP 147:16-20, 150:19-21)(Ex. 12). The Cliftons didn't move into the residence at Lot 15 until October 20th approximately because she had quite a few things in her house until that time. (3RP 148:15-17).

In addition, Les Clifton testified about his current medical condition at trial that he had diabetes and was going to be having surgery. (2RP 103:22-25). He informed the Landlord

> "about the reason we wanted to sell this was to make a profit so I could have this surgery done. And she told me that if I would bring her the intent to sell forms that we could take care of this thing and we could work it out and it would be okay."

(2RP 108: 2-6).

Landlord served a Three Day Notice to Vacate Lot 15 on September 30, 2011 (Ex. 9; 2RP 37) and delivered a Notice of Failure to Comply on or about October 13, 2011, and, then served a Summons and Complaint on November 11, 2011, (CP 4-7,12) which was subsequently amended on November 17, 2011, (CP 16-21) because the Tenants did not vacate Lot 15. (2RP 20-21)

The Tenants did not file an answer initially (1 RP 20-21). At the show cause hearing held on November 23, 2011, Judge Stahnke ordered the Tenants to file a written answer in lieu of marking their oral answer on the complaint (1RP 20:15) and ordered the parties to appear for an evidentiary hearing before Judge Robert Lewis "to see whether or not - whether it was in good faith or unreasonably withheld - or grounds of disapproval is dispositive." (1RP 19:25-20:4)

In their response to Summons dated November 23, 2011 (CP 69) the Tenants "acknowledged" Paragraph III of the complaint, which stated: "The defendants are occupying the Premises without permission of the plaintiff." (CP 17). The Landlord interprets this as being an admission, but Tenants assert that this was a denial because acknowledgement doesn't mean admission and if it's not an admission, it's a denial under CR 8.

According to the legal authority provided by RCW 59.18.380, the trial court correctly set the matter over for an evidentiary hearing. (1RP 19-21).

The case was assigned for trial before the Honorable Robert Lewis who heard testimony on December 12, 2011 and January 6, 2012. At the conclusion of the trial on January 6, 2012, the trial court ruled that the Tenants were required

to apply for tenancy in Lot 15, and could cure their default by applying for tenancy by January 18, 2012 and that Landlord had until January 25th 2012 to comply with RCW 59.20.073. (3RP 204:10-205:9). The trial court found that the statute imposes on all parties a duty of good faith (3RP 202: 24), that the mere fact they sell (their mobile home) is not normally grounds for removal (3RP 203:10,11), that "RCW 59.20.073 says the rental agreement has to be assigned, unless the landlord finds some good reason not to assign it or to deny the assignment" (3RP 203: 11-13), and that the Tenants are "new tenants, have to make some good-faith effort to give reasonable notice and to start working on getting information to the landlord so that the landlord can make a reasonable decision as to whether to withhold or approve the transfer or not." (3RP 203:15-19). Furthermore, the trial court found that the Landlord "has to approve or disapprove the

transfer of the rental agreement on the same basis that he approves or disapproves of any new tenant… he can ask for that information from a person who's already in the park before deciding whether to transfer. That's not unreasonable." (3RP 203:25-204:7).

Finally, the trial court's ruling concerning the request for attorney's fees was as follows:

> I find that each party has partially prevailed, and so each will bear their own costs and fees in this matter. At most, we would be talking about court costs and statutory attorneys' fees anyway because the two of you don't have a contract with regard to the lot we're talking about, then there's no basis to award you other than statutory attorneys' fees. But since I find that both of you prevailed on some issues in the exercise of my discretion, then each of you will bear your own costs and fees. (3RP 205:10-19)…So it wouldn't change, even if there is some argument about the statutory basis for it." (3RP 206:3,4).

D. SUMMARY OF ARGUMENT

The trial court did not misinterpret RCW 59.20.073 because RCW 59.20.073(5) provides for a

reasonableness standard to be applied where a Landlord denies/disapproves the transfer of a lease agreement. The trial court didn't improperly inject a reasonableness standard because the statute contains a reasonableness standard in RCW 59.20.073(5).

If the trial court had adopted the Landlord's interpretation of RCW 59.20.073(6), there would be a kind of strict liability standard added to the legislative intent. The dispute in this case arose over the facts that the Tenants were approved for Lot 5 and took the position that because they were approved for Lot 5, they were approved for Lot 15 without having to make re-application. This is the issue that the trial court was asked to resolve. Since the statute wasn't clear as to what to do with tenants who were moving from one Lot to another Lot within the same community that was the

initial question that the trial court had to resolve before the parties could move onto the next step of approving or disapproving their application for tenancy at Lot 15.

The tenants believed that they had a legal basis for not complying with RCW 59.20.073 because they were moving from Lot 5 to Lot 15 within the same community and had been previously approved for the community. If the trial court had agreed with the Landlord, then the tenants wouldn't have had the opportunity to litigate the issue without being in violation of RCW 59.20.073, an unintended result of the application of the Mobile Home Landlord Tenant Act.

E. ARGUMENT

(1) Standard of Review.

This Court reviews statutory interpretation

de novo. Little Mountain Estates Tenants Ass'n v Little Mountain Estates MHC, LLC, 169 Wn.2d 265, 269, 236 P.3d 193 (2010). Where the plain language of the statute is unambiguous, the statute's plain meaning should be enforced. Little Mountain Estates Tenants Ass'n v Little Mountain Estates MHC, LLC, *supra* @ 269. The Court's primary duty in interpreting a statute is to ascertain and give effect to the intent and purpose of the legislature. McGahuey v. Hwang, 104 Wn.App. 176, 181, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001). Hartson P'ship v Martinez, 123 Wn.App. 36, 42, 196 P.3d 449, *review* denied, 154 Wn.2d 1010 (2004) provided as follows:

> In ascertaining legislative intent, we must look to the statutory scheme as a whole. *Auto Drivers & Demonstrators Union Local No. 882 v Dep't of Ret. Sys.*, 92 Wn.2d 415, 420, 598 P.2d 379 (1979) (citing *Hartman v Wash. State Game Comm'n*, 85 Wn.2d 176, 532 P.2d 614 (1975)), *appeal dismissed, cert. denied,* 444 US 1040 (180). When interpreting a statute, we must determine whether its language is ambiguous; that is, whether it

> is capable of more than one reasonable interpretation. *Edelman v State ex. Rel. Pub. Disclosure Comm'n,* 116 Wn.App. 876, 882-83, 68 P.3d 296 (2003)(*citing Vashon Island Comm. For Self-Gov't v Wash. State Boundary Review Bd.,* 127 Wn.2d 759, 771, 903 P.2d 953 (1995)), *review granted,* 150 Wn.2d 1025 (2004). If the language is plain and unambiguous, we ascertain the statute's meaning from the statute itself. *Grays Harbor County,* 98 Wn.2d @ 607 (citing *Lehman,* 93 Wn2d @ 27; *Garrison v Wash. State Nursing Bd.,* 87 Wn.2d 195, 196, 550 P.2d 7 (1976)). But if it is ambiguous or unclear, we may look to legislative history to discern legislative intent. *Id.* @ 607-08 (citing *Whitehead v Dep't of Soc. & Health Servs.,* 92 Wn.2d 265, 268, 595 P.2d 926 (1979); *Ropo, Inc. v. City of Seattle,* 67 Wn2d 574, 577, 409 P. 148 (1965); *Garrison,* 87 Wn.2d @ 196)).

Hartson P'ship v Martinez, supra at 42.

The legislature has found as follows:

(1) The Legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed,

> resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents.
>
> .....
>
> (2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market.

RCW 59.22.010(1)(a) and (2).

RCW 59.20.110 provides for attorney fees to the prevailing party in an action arising out of the Manufactured Home Landlord Tenant Act, Ch. 59.20 RCW.

(2) The Trial Court Correctly Injected a Reasonableness Analysis under RCW 59.20.073(6), both at the Show Cause Hearing and Trial.

RCW 59.20.073(6) applies to a new tenant to make a good faith attempt to arrange an interview with the Landlord to discuss assignment of the rental agreement. Here, the Tenants attempted to talk with the Landlord or his staff on several occasions about transferring the lease from Lot 5 to Lot 15 and found that they were being treated as a new tenant, instead of current residents of the mobile home community.

The trial court at the show cause hearing recognized that RCW 59.20.073(5) established a reasonableness standard as follows:

> I say that based on a review of the statute authority at 59.20.073. I recognize in that statute that paragraph 5 of the statute says that, "The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld."

(1RP 18:18-25).

I recognize also that the attorney for the

> landlord paid particular attention to paragraph 6, "Failure of - to notify the landlord in writing," which is alleged here, of the transferfrom Baum to Ms. Clifton, "shall be grounds for disapproval of such transfer". (1RP 19:1-5)
>
> I believe, in reviewing the statute, that it's a shifting kind of a burden. It's presumptive that it will be disapproved, and that would be appropriate, but I don't think it's dispositive."

(1RP 19:6-9)

Therefore, the trial court inferred that RCW 59.20.073(6) makes it presumptive that the lease agreement transfer would be disapproved if any of the conditions in paragraph 6 applied, but determined that it wasn't dispositive. Therefore, based on paragraph 5 of RCW 59.20.073, the trial court at the show cause hearing determined that there was a reasonableness standard to be applied before applying RCW 59.20.073(6). This required an evidentiary hearing to determine if the transfer of the rental agreement had been reasonably or unreasonably disapproved. By doing so, the trial court did not render the statute

meaningless, he just didn't make it dispositive in light of the Tenants responses to the complaint.

The Tenants responses to the complaint included (1) they were approved for Lot 5 and are current residents of the community, and, therefore, shouldn't have to re-apply for tenancy at Lot 15 (1RP 10:12-11:4); (2) affidavits from other neighbors who have not had to do a new application for moving from one lot to another within the park (1RP 14;7-9); (3) they didn't believe they were being fairly treated by the Landlord (1RP 14:12-14); (4) they believed the Landlord was retaliating against Les Clifton because the Landlord didn't like him (1RP 15:14-20); and (5) they believed they had been discriminated against and had filed a claim with the Attorney General (1RP 15:23-25). Based on the foregoing, the trial court at the show cause

hearing had sufficient reasons to continue the show cause hearing to an evidentiary hearing in front of the trial judge, Judge Lewis.

If the trial court had not set the show cause hearing over for an evidentiary hearing, then the trial court would have been in contradiction of the law of Leda v Whisnand, 150 Wn.App. 69, 207 P.3d 468 (2009). In the Leda case, supra, the trial court's refusal to allow testimony was reviewed for abuse of discretion which would be if its ruling was based on an erroneous view of the law. Leda v Whisnand, supra @ 80. The Court of Appeals held that "RCW 59.18.380 imposes an affirmative duty on the trial court to ascertain the merits of defenses raised for the first time during an unlawful detainer show cause hearing by examining the parties and any witnesses - i.e., to "examine the parties and witnesses orally to ascertain the

merits of the … answer." Leda v Whisnand, supra @ 80. The Tenants raised numerous issues in defense of the Landlord's request to issue a writ of restitution. RCW 59.18.380 authorizes the trial court, in its discretion, as follows:

> If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within 30-days on the complaint and answer.

Leda, *supra*, continues with further direction which the trial court followed in this case:

> Because RCW 59.18.380 contemplates a resolution of the issue of possession based solely on the show cause hearing, the court must either manage its examination in a sufficiently expeditious manner to accommodate its calendar while still preserving the defendant's procedural rights, or it must briefly set the matter over for a longer show cause hearing in which those rights are respected.

Leda, *supra* @ 83. This is exactly what the Court did. There were sufficient reasons for the Court to extend the show cause hearing to the calendar

of the judge assigned to the case for a brief period, i.e., from November 23, 2011 to December 12, 2011, based on the Tenants' defenses to the complaint which were alleged at the initial show cause hearing.

The statute also requires the trial court to endorse the substance of the Tenants' answer on the complaint if the answer is oral. RCW 59.18.380. The court did not do so, but in lieu of such requirement, ordered the Tenants to file a written answer, which the Tenants did, because they filed their response on November 23, 2011 (CP 17).

In addition, the trial court clarified that the Landlord was in favor of the Tenants transferring their lease to Eva Ball, but not in favor of transferring the Bernadine Baum lease to the Tenants. (1RP 7:25-8:5). Thereby, in effect,

the Landlord had effectively displaced the Tenants from the mobile home community that they had been a part of for almost four years at the time of the show cause hearing. Therefore, the trial court was aware that landlords shouldn't be allowed to do such things in light of the Legislature's stated intent "to protect low-income mobile home park residents from both physical and economic displacement." RCW 59.22.010(2). Therefore, by continuing the show cause hearing, the trial court allowed further evidence to be presented to determine if the Legislature's intent was being circumvented or upheld.

The trial court, by setting the matter over for an evidentiary hearing, insured that Tenants' rights for an opportunity to present a defense was preserved. Furthermore, he did so because he concluded that RCW 59.20.073(6) was not

dispositive. After the trial court allowed both parties to present their case, he took it under advisement, and came back later on the docket to render his ruling to set the case over for an evidentiary hearing.

Neither continuing the show cause hearing for a brief time period nor failing to endorse the complaint with the substance of the Tenants' answer and directing them to file a response are an abuse of discretion by the trial court. Therefore, there can be no error on the part of the trial court for these alleged errors.

(3) Country Manor Should Not Be Entitled to Its Attorney's fees at Trial nor on Appeal.

RCW 59.20.110 authorizes the prevailing party to be entitled to the recovery of reasonable attorney's fees and costs "in any action arising out of this chapter". RCW

59.20.110. Under RCW 59.20.110, the prevailing party in a MHLTA action is entitled to reasonable attorney fees and costs. Hartson P'ship v Martinez, *supra @* 45. A trial judge is given broad discretion in determining the reasonableness of an award, and in order to reverse that award, it must be shown that the trial court manifestly abused its discretion. Ethridge v Hwang, *supra @* 461.

In this case the trial court denied fees to both parties: "I find that each party has partially prevailed, and so each will bear their own costs and fees in this matter… But since I find that both of you prevailed on some issues in the exercise of my discretion, then each of you will bear your own costs and fees." (3RP 205:10-19).

It wasn't until after the parties complied

with the trial court's rulings of January 6, 2012, and found that the Landlord's decision not to approve of the transfer of the lease agreement to Lot 15, did the trial court enter judgment and award statutory attorney's fees to the Landlord. Until that time, both parties had prevailed at trial, i.e., the Tenants had to comply with making application for Lot 15, and the Landlord was not entitled to a judgment.

At the final hearing on February 10, 2012, the trial court ordered the following:

> I don't have a basis for overturning it (Landlord's decision not to approve application). He's entitled to that under the law. And I find that you're in unlawful detainer entitled to the court costs and statutory attorney fees … I find that since he's decided not to have a contract with them on the lot that he's trying to evict them from, there's no basis for anything but statutory attorney fees. (4RP 15:25-16:16)

Landlord obtained the relief it sought but not until the final hearing on February 10, 2012.

Landlord didn't prevail until after the Tenants made formal re-application, the Landlord disapproved the application, and the trial court found that its decision was reasonable.

The action does arise out of the MHLTA Chapter 59.20 and Landlord's and Tenant's rights were both determined according to that act. The Tenants didn't fail to comply with the act but failed to be approved by the Landlord after making application and being disapproved by the Landlord. That decision was found to be reasonable by the trial court.

The Landlord alleges that the trial court found that the Tenants were occupying the premises without permission of the Landlord and without a rental agreement. Tenants, however, weren't in unlawful detainer until they made application and such was reasonably denied by the Landlord. (4RP 15:25-16:16).

The trial court specifically resolved the dispute of the parties by finding that RCW 59.20.073 applies to the situation where Tenants move from one lot to another lot within the same mobile home park, even though they were approved for the first lot. Until that time, Tenants believed they were within their rights that because they had been approved for Lot 5 they could move within the park to Lot 15 without having to re-apply. The trial court clarified this and found that

> "the rental agreement has to be assigned, unless the Landlord finds some good reason not to assign it or to deny the assignment, and the new Tenant - and with respect to the lot that we're talking about, that's what you folks are, new tenants, have to make some good faith effort to give reasonable notice and to start working on getting information to the Landlord so that the Landlord can make a reasonable decision as to whether to withhold or

approve the transfer or not." (3RP 203:11-19).

Landlord, in his brief, alleged error that the trial court should have awarded fees to Country Manor, focuses on the ultimate result without noticing how that result was achieved. The trial court used RCW 59.20.073 to compel the parties to finish the application - deny/approve process thereby reasonably concluding that entry of an Order Authorizing a Writ of Restitution was premature until after that series of decisions had been made. This interpretation of RCW 59.20.073 was foundational to both parties having prevailed: (1) Landlord forcing Tenants to comply with the application process, and (2) Tenants not being in unlawful detainer. The final judgment, therefore, was finally achieved, but not until the final hearing on February 10, 2012. The trial court was correct in denying fees until that time, and, entering an award for statutory

attorney fees for the Landlord at the final hearing.

(4) Tenants Should Be Awarded Their Attorney's Fees on Appeal.

In the event that the Tenants prevail on the issues on appeal, as they should, the Tenants respectfully request that their attorneys fees on appeal be awarded to them under RCW 59.20.110 and RAP 18.1(a).

F. CONCLUSION.

This Court should:

(1) affirm the trial court's denial of an award of attorney's fees and costs at trial to Country Manor;

(2) affirm the trial court's rulings assigning this matter to trial, and

(3) award Respondents Clifton attorney's

fees on appeal as the prevailing party.

DATED this 21 day of August 2012.

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CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing RESPONDENT'S BRIEF to:

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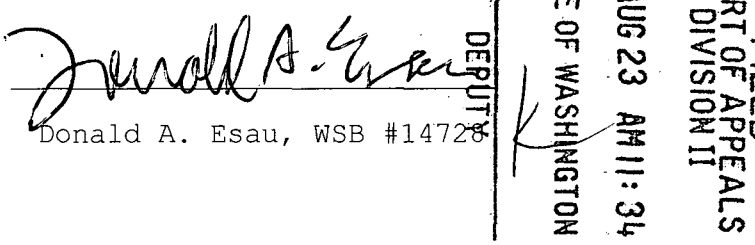
By first class mail, postage prepaid on this 21ST day of August 2012.



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